

FINANCIAL INFORMATION FORUM

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Via Electronic Delivery

January 24, 2014

Ms. Elizabeth M. Murphy
Secretary
U. S. Securities and Exchange Commission
100 F Street, NE,
Washington, DC 20549-1090

Re: Release No. 34-70892, File Number 4-668, Proposed National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail

Dear Ms. Murphy,

The Financial Information Forum (FIF)¹, on behalf of our Consolidated Audit Trail (“CAT”) Working Group (“Working Group”) is submitting this second comment letter² with respect to the recent filing of the NMS Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail (“Selection Process NMS Plan”).³ The Working Group has reviewed comment letters to date and recent CAT Development Advisory Group (DAG) responses to the comment letters most notably the FINRA letter⁴. We would like to make the following additional recommendations at this time:

- Distribute DAG materials on the CAT NMS Plan Website to allow fair and equal access to DAG discussion topics and decisions
- Share information with DAG at the same level of detail expected in CAT NMS Plan to the greatest extent possible
- Limit the use of Non-Disclosure Agreements (NDAs) to targeted, confidential information regarding bids

Each of these recommendations is discussed in more detail below.

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² See Letter to Elizabeth M. Murphy, Secretary, Commission, from Manisha Kimmel, Executive Director, Financial Information Forum, dated December 23, 2013.

³ Proposed National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail, November 13, 2013, Release No. 34-70892, File Number 4-668

⁴ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Mary Asquith, Senior Vice President and Corporate Secretary, Financial Industry Regulatory Authority, Washington, District of Columbia, dated December 20, 2013 (“FINRA letter”).

Distribute DAG Materials on the CAT NMS Plan Website⁵

As we stated in our initial comment letter, the importance of transparency and industry participation in the CAT development process cannot be underestimated. Discussions held at the DAG directly relate to the functionality offered to CAT Reporters. While the SROs may not reach final decisions on all discussion topics at each session, meeting materials would give bidders and the community at large an opportunity to understand issues related to CAT Reporter functionality that are under discussion. Additionally, there are many areas of CAT functionality that have been thoroughly addressed by DAG where final decisions could be made and communicated to a broader audience through this mechanism. Providing this level of access would be consistent with the FINRA letter which states:

“In the interest of formulating Bids that are as comprehensive and responsive as possible, FINRA believes that it is important that all Bidders have uniform information relating to DAG discussions and recommends that a formal process be established under which the SROs disseminate information to all Bidders relating to DAG discussions that are relevant to the bidding process. FINRA believes this will provide the appropriate transparency and uniformity with respect to the sharing of information relating to the DAG, so that all Bidders receive the same information.”

FIF agrees that access to DAG discussions should be available to all Bidders and to other interested parties.⁶ Release of DAG meeting materials and minutes on the CAT NMS Plan website would achieve this goal.

Share Information with DAG at Level of Detail Expected in CAT NMS Plan

The FINRA letter also states that “the SROs have indicated to Bidders that if the SROs determine there is a need to share confidential information with the CAT Development Advisory Group (“DAG”), the SROs will require the relevant DAG members to sign NDAs”. FIF would like to re-iterate our belief expressed in our initial comment letter that it should not be necessary to share confidential information in order to obtain useful feedback from the DAG. We appreciate that the SROs desire to share information from the bids with DAG and believe the SROs can extract CAT Reporter functionality from the bid proposals to solicit informed opinions without revealing confidential information. This belief stems from our understanding that Rule 613 requires the CAT NMS Plan to be sufficiently detailed as to describe the alternatives considered as well as the reasons for the recommendations made. This level of detail will be public information once the CAT NMS Plan is published. Specifically, the Rule 613 filing states:

“Rule 613(a)(1)(xii) requires the NMS plan to discuss “[a]ny reasonable alternative approaches to creating a consolidated audit trail that the plan sponsors considered in developing the national market system plan, including, but not limited to, a description of any such alternative approach; the relative advantages and disadvantages of each such alternative, including an assessment of the alternative’s costs and benefits; and the basis upon which the plan sponsors selected the approach reflected in the national market system plan.”⁸³⁷ The Commission believes this consideration is appropriate because it reflects the view, supported by commenters, that there are alternative approaches to creating, implementing, and maintaining the consolidated audit trail. The Commission believes that requiring the SROs to discuss alternatives considered helps ensure that the plan sponsors have appropriately weighed the merits of the various approaches that might be considered to create, implement, and maintain the consolidated audit trail, by requiring the NMS plan to describe the alternatives that the plan sponsors considered before making any significant decision with respect to the consolidated audit trail, and the relative advantages

⁵ See www.catnmsplan.com

⁶ Additionally, FIF believes access to this information will help FINRA better understand how to leverage CAT for other regulatory objectives including those associated with the FINRA CARDS initiative. See [Regulatory Notice 13-42](#).

and disadvantages, including costs and benefits, of such alternatives. The Commission also believes that requiring transparency with respect to alternative approaches and the decision-making process of the SROs will facilitate public comment on the NMS plan and the wisdom of the approach selected by the plan sponsors. Similarly, such transparency should provide the Commission with useful insights into the rationale for the approach chosen by the plan sponsors as it considers whether to approve the NMS plan submitted to the Commission. The Commission also notes that this consideration complements Rule 613(a)(1)(vii), discussed above, which requires that the NMS plan discuss the detailed estimated costs to the plan sponsors for creating, implementing, and maintaining the consolidated audit trail, because this consideration requires the NMS plan to provide the costs of the alternatives that were not adopted by the plan sponsors in the NMS plan submitted to the Commission.”

It is important to note that the Selection Process NMS Plan does not contemplate revision of the bids prior to the submission of the CAT NMS Plan.⁷ Given that bids cannot be revised during this time, FIF does not believe that information leakage is a practical concern. FIF and other DAG members are simply interested in assisting the SROs as they evaluate alternatives in order to arrive at a recommended approach all of which will be discussed in detail in the CAT NMS Plan. We believe broad input during the CAT NMS Plan development process is critical to arriving at a recommendation that considers the CAT Reporter perspective. Including the DAG in this process rather than waiting for the publication of the CAT NMS Plan is intended to address CAT Reporter issues upfront allowing Bidders to benefit from the discussion and in the hopes of arriving at a CAT NMS Plan that meets industry needs.

Limit NDA to Targeted, Confidential Information Regarding Bids

If the SROs deem it necessary to have DAG members sign NDAs in order to share confidential portions of Bidders’ responses, FIF recommends that the NDAs be targeted and finite in nature. Specifically, DAG discussions on CAT Reporter functionality should not be subject to an NDA. It is important to note that not every firm or even every type of firm that will be impacted by CAT is on the DAG itself. To be effective and accurately reflect broader industry requirements, DAG members must have the ability to discuss topics with peers through direct means as well as through industry forums such as FIF. To date this has been a key aspect of the DAG process. Therefore, to the greatest extent possible, information relating to Bidders’ responses should be made publicly available to facilitate critical outreach from the DAG. Only information relating to confidential portions of bids should be covered under an NDA. DAG members that sign an NDA would respectfully request the opportunity to discuss how confidential information could be redacted so that it could be shared with a broader audience in order to obtain additional feedback if needed.

We appreciate the opportunity to provide these additional comments and look forward to working with the SROs and the SEC as the CAT process moves forward.

Regards,



Manisha Kimmel
Executive Director
Financial Information Forum

⁷ FIF understands that revision of bids will be possible after the CAT NMS Plan is approved. As stated in our initial comment letter, FIF recommends allowing all bidders the opportunity to revise their bid.

cc: The Honorable Mary Jo White, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel J. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

John Ramsay, Acting Director, Division of Trading and Markets
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